IN THE CHANCERY COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

APRIL HAWTHORNE, on behalf of herself and all similarly situated persons,

PLAINTIFF,

v.

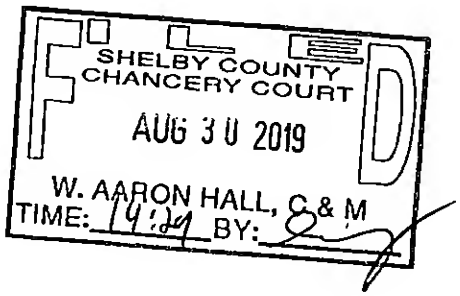
MORGAN & MORGAN NASHVILLE, PLLC, a limited liability company with its principal place of business in Tennessee; KATHRYN E. BARNETT, an individual and a resident of Tennessee; JOHN B. MORGAN, an individual and resident of Florida; MORGAN & MORGAN NASHVILLE MANGEMENT, INC., a Florida corporation; and MORGAN & MORGAN, P.A., a Florida professional association.

DEFENDANTS.

No. CH-19-1232
Part 1

CLASS ACTION COMPLAINT FOR LEGAL MALPRACTICE, BREACH OF FIDUCIARY DUTIES, NEGLIGENT SUPERVISION, AIDING AND ABETTING BREACH OF FIDUCIARY DUTY, AND PUNITIVE DAMAGES AS A REMEDY

JURY TRIAL DEMANDED PURSUANT TO TENN. R. CIV. PRO. 38.01 & 38.02



TO THE HONORABLE CHANCELLORS:

Plaintiff April Hawthorne, on behalf of herself and all other similarly situated persons, by and through her designated attorneys, and for her Class Action Complaint alleges as follows: All allegations in this Complaint are based upon the investigation of counsel, except the specific allegations pertaining to the named Plaintiff, which are based upon her personal knowledge. As

of the date of this Complaint, no discovery has been conducted. As a result, it is likely that once the discovery process is underway, the named Plaintiff will seek leave to amend this Complaint to add new factual allegations, new claims and/or new parties.

I.

NATURE OF THE ACTION

1. This putative Class Action Complaint asserts claims for (i) Legal Malpractice, (ii) Breach of Fiduciary Duties, (iii) Negligent Supervision, (iv) Aiding and Abetting Breach of Fiduciary Duty, and (vi) Punitive Damages as a Remedy for significant monetary damages proximately caused by the Defendants' intentional, willful, reckless and/or negligent acts and omissions in connection with their representation of Plaintiff and a Class of persons certified under Rule 23 of the Tennessee Rules of Civil Procedure (those whose loved ones were interred at the now defunct Galilee Memorial Gardens cemetery from 2011 to 2014) in the action known as, *Akilah Louise Wofford, individually and on behalf of all similarly situated persons v. M.J. Edwards & Sons Funeral Home, Inc., et al.* CH-14-0197 (previously pending in the Shelby County Chancery of Tennessee at Memphis before the Honorable Chancellor Jim Kyle (hereinafter referred to as the "Wofford/Galilee Class Action").

2. As alleged in detail below, Defendants Kathryn E. Barnett and John B. Morgan, along with their corporate affiliates, recklessly and superciliously considering themselves to be infallible trial attorneys, wielded total control of the Wofford/Galilee Class Action – which presented difficult liability claims against over thirty funeral home director companies – and egregiously and inexcusably refused to entertain, respond to, and accept over $25 million dollars in settlement offers made by the Funeral Home Defendants during the trial of the Wofford/Galilee Class Action.

3. Indeed, Defendants Barnett and Morgan recklessly rejected the advice of every other plaintiff attorney representing persons in the Wofford/Galilee Class Action (who were seasoned trial lawyers with over 100 years of trial experience); these plaintiff attorneys begged Defendants Barnett and Morgan to consider and negotiate settlement offers with the Funeral Home Defendants in light of the risks posed by the case.

4. Instead, blinded by their galactic sized egos and their never-ending quest to boost their massive television and internet advertising campaigns with a "multimillion dollar personal injury verdict" for Morgan & Morgan, Defendants threw caution to the wind, alienated virtually every defense lawyer in the action with their overly aggressive and unprofessional behavior, disregarded the best interests of their clients in favor of their own, and flatly refused to entertain and/or counter any settlement offers and requests to negotiate from the Funeral Home Defendants. Defendants, in short, viewed the Wofford/Galilee Class Action as their own personal case that they could try and handle as they saw fit, without any communication with any of the actual Class Members, including the named Class representatives themselves. Indeed, Defendant Barnett amazingly refused to even inform Class representatives of the existence of some of these settlement offers, deeming such a task unnecessary she since was "in charge" as Lead Class Counsel.

5. Unfortunately, the unbelievable hubris and gross malpractice of Defendant Barnett and her boss, Defendant John Morgan, was the direct and proximate cause of the certified Class losing millions in settlements that could have and would have been achieved have they not negligently refused to settle as Lead Class Counsel.

6. In the end, Defendants left a minimum of $25 million (and perhaps even more) on the table and recklessly forced the Wofford/Galilee Class Action to verdict, which resulted in

$75 per family for approximately 1,100 Memphis families who lost loved ones to mishandling at Galilee cemetery, for a total recovery for the entire Class of $82,000.00.

II.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action by virtue of TENN. CODE ANN. § 16-10-101 *et seq*.

8. This Court has personal jurisdiction over Defendant Kathryn E. Barnett pursuant to TENN. CODE ANN. § 20-2-222(1) on the grounds that she is a permanent resident of Tennessee. Further, pursuant to TENN. CODE ANN. §§ 20-2-223(a) & 225, personal jurisdiction exists over Defendant Kathryn E. Barnett on the grounds that the wrongful conduct alleged herein, and the injuries flowing from same, substantially occurred in Tennessee.

9. This Court has personal jurisdiction over Defendant Morgan & Morgan Nashville, PLLC, TENN. CODE ANN. § 20-2-222(1) on the grounds that its principal place of business in located in Tennessee. Further, pursuant to TENN. CODE ANN. §§ 20-2-223(a) & 225, personal jurisdiction exists over Defendant Morgan & Morgan Nashville, PLLC, on the grounds that the wrongful conduct alleged herein, and the injuries flowing from same, substantially occurred in Tennessee

10. This Court has personal jurisdiction over Defendants John B. Morgan, Morgan & Morgan Nashville Management, Inc, and Morgan & Morgan, P.A., pursuant to TENN. CODE ANN. § 20-2-223(a) & 225 on the grounds that the wrongful conduct alleged herein, and the injuries flowing from same, substantially occurred in Tennessee. Further, pursuant TENN. CODE ANN. § 20-2-225to this Court has general personal jurisdiction over Defendant John B. Morgan on the grounds that his contacts with Tennessee are systematic and continuous.

11. Venue is proper in this judicial district pursuant to TENN. CODE ANN. § 20-4-101(a) on the ground that the cause of action arose in Shelby County, Tennessee. Venue is also proper in this judicial district pursuant TENN. CODE ANN. § 16-11-115(3) and (4) on the grounds that this county is the location where the services were rendered.

12. Plaintiff and the putative Class Members (as defined below in paragraph 76) do not assert any federal causes of action. To the contrary, their claims arise solely under Tennessee law common law. Thus, this action is not subject to removal under 28 U.S.C. § 1331 because Plaintiff asserts no federal claim and expressly disclaims same. Plaintiff shall seek all attorney's fees and costs that they incurred as a result of any removal attempted by Defendants under 28 U.S.C. § 1331, pursuant to 28 U.S.C. § 1447(c).

13. Defendants Kathryn E. Barnett, as a resident of Tennessee, and Morgan & Morgan Nashville, PLLC, with its principal place of business in Tennessee, are both Tennessee citizens and are both party defendants from whom significant relief is sought by the named Plaintiff and the Class Members and whose conduct forms a significant basis for the claims asserted by the named Plaintiff and the Class Members. The principal injuries resulting from the wrongful conduct alleged herein were incurred in Tennessee, and no class action has been filed in the preceding three (3) years asserting the same or similar allegations concerning these Defendants' wrongful actions. Further, upon information and belief, greater than two-thirds of the unnamed Class Members are citizens of Tennessee. As a result, federal courts do not have subject matter jurisdiction over this Class Action under the Class Action Fairness Act ("CAFA"), as mandated by 28 U.S.C. § 1332(d)(4)(A). Plaintiffs shall seek all attorney's fees and costs that they incurred as a result of any attempted removal by Defendants under CAFA, pursuant to 28 U.S.C. § 1447(c).

III.

THE PARTIES

14. Plaintiff April Hawthorne (hereinafter referred to as "Plaintiff") is an individual resident of Shelby County and proposed representative of a Class of individuals who were members of the certified Galilee Class Action and who were represented by the Defendants in this matter.

15. Defendant Kathryn E. Barnett (hereinafter referred to as "Barnett") is an individual resident of Tennessee and a duly licensed Tennessee lawyer under Tennessee Board of Professional Responsibility Number 15361 who is the Managing Partner of Defendant Morgan & Morgan Nashville, PLLC. Service of process may be accomplished on Defendant Barnett at 1619 18th Avenue, Nashville, Tennessee 37212.

16. Defendant Morgan & Morgan Nashville, PLLC (hereinafter referred to as "Morgan Nashville") is a limited liability company duly organized and existing under the laws of the State of Florida, with its principal place of business located at 810 Broadway, Suite 105, Nashville, Tennessee 37203. Service of process may be accomplished on Defendant Morgan Nashville via its registered agent for service of process, National Registered Agents, Inc., 300 Montvue Road, Knoxville, Tennessee 37919.

17. Defendant John B. Morgan (hereinafter referred to as "Morgan") is an individual resident of Florida and a duly licensed Tennessee lawyer under Tennessee Board of Professional Responsibility Number 28790. Upon information and belief, Defendant Morgan controls, directly or indirectly, Defendants Morgan & Morgan, P.A., and Morgan & Morgan Nashville Management, Inc., which in turns controls Morgan Nashville and its attorneys, including, but not limited to, Defendant Barnett. Service of process may be accomplished on Defendant Morgan at

1887 Bridgewater Drive, Lake Mary, Florida 32746.

18. Defendant Morgan & Morgan Nashville Management, Inc. (hereinafter referred to as "Morgan Nashville Management") is a corporation duly organized and existing under the laws of the State of Florida, with its principal place of business located at 20 N. Orange Avenue, Suite 1600, Orlando, Florida 32801. Upon information and belief, Defendant Morgan caused the incorporation of Morgan Nashville Management through which he, individually or through Morgan & Morgan. P.A. could manage and control the operations of Defendant Morgan Nashville. Service of process may be accomplished on Defendant Morgan Nashville Management via its registered agent for service of process, WHWW, Inc. (a/k/a Winderweedle, Haines, Ward, Woodman), 329 N. Park Avenue, Second Floor, Winter Park, Florida 32789.

19. Defendant Morgan & Morgan, P.A. (hereinafter referred to as "Morgan & Morgan") is professional association duly organized and existing under the laws of the State of Florida, with its principal place of business located at 20 N. Orange Avenue, Suite 1600, Orlando, Florida 32801. Morgan & Morgan was originally incorporated in Florida in 1988 under the name Morgan, Colling & Gilbert, P.A. and in or about 2005, Defendant Morgan changed this firm's name to The Morgan Firm, P.A. when he took total control of the company in 2006, he then changed the name to Morgan & Morgan, P.A. Upon information and belief, Defendant Morgan directly or indirectly controls Morgan & Morgan through which he controls Morgan Nashville Management and Morgan Nashville. Service of process may be accomplished on Defendant Morgan & Morgan via its registered agent for service of process, WHWW, Inc. (a/k/a Winderweedle, Haines, Ward, Woodman), 329 N. Park Avenue, Second Floor, Winter Park, Florida 32789.

20. Defendants Kathryn E. Barnett, Morgan & Morgan Nashville , PLLC, John B.

Morgan, Morgan & Morgan Nashville Management, Inc. and Morgan & Morgan, P.A. are collectively referred herein as "Defendants."

IV.

FACTUAL ALLEGATIONS

A. Memphis Attorneys File the Galilee Class Action and then Defendants Barnett and Morgan Nashville Extort the Lead Counsel Position from Them by Threatening to Destroy the Class by Opting Her Clients Out of Any Certified Class.

21. Galilee Memorial Gardens was a cemetery located in Bartlett, Tennessee, that catered to low income persons who could not afford to pay much for a burial plot for their deceased loved ones. Many of the local Funeral Home Directors who provided burial services for these low income consumers would steer them to Galilee because the plot costs were cheap. Sometime beginning in 2012, news media reported that Galilee and its owner Jemar Lambert had been found by a civil court to have buried decedents on property that was adjacent to Galilee but not owned by it. The Court issued an injunction against Galilee and Mr. Lambert enjoining them from doing such unauthorized burials in the future. Later, news outlets reported that Galilee had violated this Court Order, leading to Mr. Lambert's arrest. At or about this time, it was discovered that the State of Tennessee had revoked Galilee's cemetery license such that Galilee was not authorized to bury any more decedents on its property.

22. Shortly after these revelations, Mr. Lambert was criminally indicted for mishandling human remains in 2013. At that time, persons who had taken their loved ones for burial at Galilee began to complain that the cemetery was ill kept, that Galilee had given conflicting and suspicious stories as to where loved ones were buried, and that its records did not accurately show where bodies were buried. In short, many persons had no idea where their loved ones were buried on the Galilee property. Further, stories had surfaced that Galilee, which had run out of burial room on its property, had buried multiple bodies in the same graves.

23. On February 9, 2014, Memphis Attorneys Howard Manis and James Blount, along with Knoxville Attorney James Andrews, filed a Class Action Complaint in Shelby County Chancery Court styled *Akilah Louise Wofford, individually and on behalf of all similarly situated persons v. M.J. Edwards & Sons Funeral Home, Inc., N.J. Ford and Sons Funeral Homes, Inc., and all similarly situated funeral homes who sent corpses to Galilee Memorial Gardens, JM&M Services, Inc., Lambert & Sons, Inc., Jemar Lambert, Maroje Lambert and all persons or entities acting in concert with them*, CH-14-0197 (hereinafter referred to as the "Wofford/Galilee Class Action").

24. Meanwhile in 2014, the Cochran Law firm in Memphis had received hundreds of calls from potential Galilee claimants, complaining that they too could not locate their loved ones at Galilee. The Cochran Firm signed up these clients for representation, amassing approximately 500 families who had potential claims against Galilee and the Funeral Homes that took decedents there for burial.

25. The Cochran Law Firm, however, had lost a number of lawyers to Morgan & Morgan's Memphis office that had been established by Defendant Morgan in 2009. At that time, the Cochran Firm did not have the requisite manpower to handle all of these clients. As a result, Sam Cherry, the Managing Member of the Cochran Firm, approached Defendant Morgan and requested that his firm take the lead in representing these clients and enter into a fee sharing arrangement.

26. Defendant Morgan agreed to have Defendant Barnett, the Managing Partner of the newly formed Morgan Nashville office, represent these clients in a proposed Class Action, since, out of all the Morgan & Morgan's Tennessee lawyers, only she had prior class action experience. Defendants Barnett and Morgan agreed that Defendants Barnett and Morgan Nashville would

seek to file a Class Action and have Defendant Barnett appointed as "Lead Counsel" so that she and Morgan Nashville could demand to receive all or substantially all of any legal fees that might be awarded from a settlement or judgment.

27. Defendants Barnett and Morgan had just one problem: the Wofford/Galilee Class Action already had been filed by Attorneys Manis, Blount, and Andrews. Any second suit filed by Defendants Barnett and Morgan would be stayed because it was not the first filed lawsuit, thereby preventing Defendant Barnett from seeking appointment as Lead Counsel. Additionally, given Mr. Andrews experience in many prior class actions, it was highly unlikely that Defendant Barnett and her new firm, Morgan Nashville, could somehow wrest control of the Wofford/Galilee Class Action so as to become Lead Counsel and, as she and Defendant Morgan both desired, receive the lion's share of any attorney fee that might be earned. So in an effort to achieve her goal to become Lead Counsel, Defendants Barnett and Morgan hatched a scheme to extort Messrs. Manis, Blount, and Andrews (and their client the named Class representative) into allowing Defendant Barnett to represent the Class in the Wofford/Galilee Class Action as Lead Class Counsel.

28. Specifically, in the Summer of 2014, Defendant Barnett contacted Mr. Manis and informed him that she and Morgan Nashville (through association with the Cochran firm) had 500 separate clients who had decedents buried at Galilee.

29. Defendant Barnett threatened Mr. Manis that if the Wofford/Galilee Class Action were, in fact, certified under Rule 23 as a Class Action and Messrs. Manis, Blount and Andrews had not agreed to make her Lead Class Counsel, she would cause all of her 500 separate clients to "opt-out" of the Class, thus deflating and destroying the need for a Class Action.

30. While Defendant Barnett claimed the Class Action vehicle was in the best interest

of all claimants given the huge efficiency it would provide, such a claim was disingenuous because she only desired to prosecute a Class Action if she could be Lead Counsel and garner the majority of the fees. Indeed, Plaintiff does not believe that Defendant Barnett even cleared this "if I'm not Lead Counsel, my clients will opt-out strategy" with the 500 clients she had amassed; instead, Defendant Barnett did what she would later do throughout the Wofford/Galilee Class Action: whatever she wanted to do, without communicating with the Class representatives and without any concern for their needs.

31. Faced with Defendant Barnett's threat to opt-out her clients from any certified Class that did not recognize her as Lead Counsel, and thus destroy the need for the prosecution of any Class (though such a prosecution would certainly be cheaper and more efficient than the 500 separate lawsuits Defendant Barnett threatened), Messrs. Manis, Blount, and Andrews were forced to capitulate to Defendant Barnett's demands and agreed to make her Lead Counsel. On November 6, 2016, Chancellor Jim Kyle entered an Order Designating Plaintiffs' Counsel, which appointed Defendant Barnett of Morgan Nashville as Lead Class Counsel.

32. Defendant Barnett indicated that Messrs. Manis, Blount, and Andrews should continue as counsel of record on the Wofford/Galilee Class Action so as to assist her when she requested as the case progressed.

B. <u>The Wofford/Galilee Class Action is Certified as Class and Mediated Without Success Due to Defendants' Outrageous and Egregious Demands.</u>

33. In November 2015, in the Wofford/Galilee Class Action, Chancellor Kyle issued a detailed Order granting certification of an opt-out Class. The Funeral Home Defendants appealed that decision, which was affirmed by the Tennessee Court of Appeals in March 2017.

34. Thereafter, in April 2018, the parties conducted mediation. At the mediation, Defendant Barnett demanded each Funeral Home pay $150,000 per decedent, regardless of the

facts applicable to each defendant and regardless of each defendant's ability to pay (and the collectability of) such an amount.

35. The Funeral Home Defendants countered Defendant Barnett's demand with opening offers in the $5,000 to $10,000 range. Despite the universal urging of every plaintiff lawyer involved, including Mr. Cherry and Mr. Manis, Defendant Barnett refused to reduce her $150,000 demand and further negotiate, thus causing the mediation to fail miserably. Defendant Barnett's conduct was not a mere "error of professional judgment" but was so egregious as to be unreasonable and to be well below the standard of care imposed on Tennessee lawyers.

36. Defendant Barnett recklessly ignored all other plaintiff attorneys' pleas that she negotiate with the Funeral Home Defendants, contending that she, and she alone, knew best. Defendant Barnett did not clear this position with any of the Class members, including the named Class representatives.

37. Though Defendant Barnett had never tried to verdict any corpse mishandling case, she often cited her experience with the Tri-Crematory Class Action, which was settled after one week of trial, as the basis for her value of the case. There, Brent Marsh, an owner and operator of a crematory in Noble, Georgia, accepted for cremation bodies delivered from funeral homes in Tennessee, Georgia, and Alabama for nominal fees to be paid by the funeral home. Instead of cremating the bodies, he tossed them onto his land to rot. The facts and circumstances of the Tri-Crematory case were different than those of the Wofford/Galilee Class Action. With respect to Galilee, the proof of liability of the Funeral Home Director defendants was more difficult. Specifically, there no evidence that any of the Funeral Home Defendants had knowingly or recklessly participated in the wrongful burial of any corpse or the crushing of any caskets, etc.

38. Indeed, while it was undisputed that Galilee was an extremely bad actor in this

case, Galilee grossly failed to track of where decedents were buried, which presented difficulties for all parties to the litigation. The basis of the Funeral Home Defendants' liability hinged on the allegation that they had a duty to stay at the graveside after the funeral service and, by observation, watch Galilee bury each body, that the Funeral Home Defendants had failed to do so, and, had they fulfilled this duty that Galilee would have been less likely to bury another casket in the same grave.

39. The Funeral Home Defendants vehemently argued that the standard in the funeral directing industry did not require them to "watch" a decedent's burial (and as a result, they had not done so), that they had no such legal duty, and that even if they had stayed to watch each burial, it would not have prevented Galilee's failure to properly mark and track where each decedent was buried.

C. <u>As Trial Approaches, Defendant Barnett keeps All Plaintiff Lawyers in the Dark, Insisting that the Funeral Home Defendants "Will Never Let Us Seat a Jury" and *thus Will Settle on the Eve of Trial and Recklessly Ignores the Funeral Home* Defendants Lack of Ability to Pay.</u>

40. Following the failed mediation, Defendant Barnett's holier-than-thou attitude as to her representation of the Class continued with abandon.

41. In the Summer of 2018, with the trial rapidly approaching, Messrs. Manis, Cherry, Blount, and Andrews frequently asked Defendant Barnett to share her trial plan, inquiring which witnesses did she desire to call, who would handle voir dire, who would examine the fact and expert witnesses, who would cross examine witnesses, and who would handle opening and closing statements.

42. Defendant Barnett responded that she had this all "handled" and that Messrs. Manis, Cherry, Blount, and Andrews did not need to worry about these issues because Defendant Barnett knew that the Funeral Home Defendants would capitulate and settle before opening

statements in the trial began, claiming that "there's no way the defendants will ever let us seat a jury."

43. Defendant Barnett's smug, infallible attitude thus continued, with her once again shrugging off plaintiff attorneys' pleas for her to re-engage in settlement discussions with the defense counsel.

44. This was clearly an egregiously unreasonable position – not only based on the difficulty of the case but also based on the lack of the ability of the Funeral Home Defendants' to pay any large, per-body settlement or judgment.

45. For example, Defendant Barnett totally ignored the fact that the Funeral Home Defendants' insurance policies provided them with limited coverage or, practically speaking in some instances, no coverage at all. Accordingly, they could not possibly afford the exorbitant $150,000 sum demanded by her.

46. While insurance policies are not discoverable in Tennessee courts, many of the Funeral Home Defendants had been sued by their insurance carriers, seeking judicial declarations that their policies either did not cover or only partially covered the claims asserted by the Class. As a result, most, if not all, of the Funeral Home Defendants' insurance policies, including their coverage limits, were available for examination by Defendant Barnett and the other plaintiffs' attorneys.

47. Defendant M.J.Edwards & Sons Funeral Home, Inc. – the Funeral Home that had delivered more corpses to Galilee than any other funeral directing company (and thus arguably had the largest exposure) – was sued by Landmark Insurance, its insurance carrier. In the Winter of 2018, well before the trial, U.S. District Judge John Fowlkes issued an Order declaring that MJ Edwards's policy contained a $100,000 per decedent deductible – meaning that MJ Edwards

would be required to pay the first $100,000 per body in connection with any judgment (or any settlement agreed upon by MJ Edwards, Landmark and the Class) before Landmark would be required to pay money towards any settlement or judgment.

48. Counsel for Defendant MJ Edwards communicated this to Mr. Manis and assured him that MJ Edwards entity had no financial ability to pay anywhere remotely close to $100,000 per body, let alone the $150,000 still being demanded by Defendant Barnett for all defendants. Mr. Manis informed Defendant Barnett of these critical facts.

49. Thus Defendant Barnett knew or was reckless or negligent in not knowing that MJ Edwards essentially had no insurance money with which to settle the Class' claims and that it would have to rely upon its small assets to settle. Nevertheless, Defendant Barnett – in an extreme departure from the standard of care – recklessly claimed that she was not worried about the ability of MJ Edwards to pay since its stock was owned by Service Corporation International, Inc., a nationwide company that owns various funeral home companies, whom she claimed would pay on MJ Edwards behalf.

50. Mr. Manis pointed out that SCI had not been sued, had no legal responsibility to pay anything on MJ Edwards behalf, and that any significant judgment against MJ Edwards could be easily bankrupted.

51. In response, Defendant Barnett brazenly claimed that, on behalf of the Class, she could sue SCI at a later date, pierce MJ Edwards' corporate veil and thus easily force SCI, as the alter ego of MJ Edwards, to pay any judgment against MJ Edwards.

52. When asked what facts she had that would support a claim that MJ Edwards' corporate veil could be pierced and that it was the alter ego of SCI, Defendant Barnett admitted she had no facts but stated she was confident she could prevail on such a claim.

D. Knowing that Defendant Barnett's Conduct is Reckless and Endangering the Class, Mr. Manis Settles with Two Funeral Homes; Upon Learning of this, Defendant Barnett Becomes Unhinged and Threatens to Abandon the Trial If She Does Not Have Absolute Authority Over Future Settlements.

53. In the last few weeks leading up to the trial in late August 2018, it became evident to Messrs. Manis, Cherry, Blount, and Andrews that Defendant Barnett was on some strange personal mission to prove she was the "best" lawyer in the case and (apparently) to make her mark as a trial prodigy with her new boss, Defendant Morgan. Messrs. Manis, Cherry, Blount, and Andrews reasonably believed that Defendant Barnett's approach to settlement would cause the Class significant damages.

54. As a result, in August 2018, in the days leading up to the trial set to begin in September 4, they began to communicate with certain defense counsel who had expressed a desire to settle at the failed mediation. Specifically, Mr. Manis resumed settlement discussions with defense lawyers Bob Talley and Dawn Carson, who were representing Funeral Home Defendants insured by insurance policies issued by State Farm Insurance Company. (Mr. Talley represented Jefferson Mortuary, Inc. and Ms. Carson represented SLS, LLC and Superior Funeral Home Hollywood Chapel).

55. Mr. Talley and Ms. Carson voluntarily disclosed their respective clients' State Farm Insurance policies so as to allow Mr. Manis to verify their policy limits. Thereafter, Mr. Manis negotiated a Class settlement with these defendants.

56. Subject to Court approval, Defendants SLS/Superior Funeral Home agreed to pay $4 million in total for the 157 bodies it delivered to Galilee (equaling $25,477 per decedent); this amount was the full State Farm policy limit for SLS/Superior Funeral Home. Similarly subject to Court approval, Defendant Jefferson Mortuary agreed to pay $1.35 million in total to settle the 27 bodies it delivered to Galilee (equaling $50,000 per body); this was slightly less than State

Farm's policy limits. Defendant Barnett did not know of nor participate in these two Class settlements until the morning they were announced in Court.

57. During the last week in August 2018 during Motions in Limine, Mr. Manis announced to Chancellor Kyle in open Court the proposed settlements he had made with Mr. Talley and Ms. Carson just before a Court scheduled lunch break.

58. When Defendant Barnett learned of this, she became visibly emotional and upset. At the break, she stormed back to the Cochran Firm's office and, in a conference room where Messrs. Manis, Cherry, Blount, and Andrews were present, Defendant Barnett became unhinged. She screamed that she and she alone was Lead Counsel and that all other attorneys had granted her sole authority to approve or disapprove of any proposed settlement.

59. These attorneys countered that this was not the case and that, in any event, the settlements achieved with Jefferson Mortuary and SLS/Superior had been achieved without her knowledge and participation because Defendant Barnett was not acting in the best interest of the Class and had egregiously refused to negotiate with the Funeral Home defendants.

60. Defendant Barnett's ego could not take this valid criticism, so she literally stood up and stated to the group that she and the lawyers she had brought from Morgan Nashville were going back to Nashville and would not try the case, leaving it to Messrs. Manis, Blount, Cherry, and Andrews to fend for the Class literally one (1) day prior to jury selection.

61. These lawyers were forced to apprise Defendant Barnett that she and her firm had kept them in the dark as to the trial strategy, that she claimed she had all of the witnesses and trial presentation handled, and that leaving the case in their hands, without Court approval as to her withdrawal, was legal malpractice, unethical, and would force the other plaintiff lawyers to file a complaint with the Board of Professional Responsibility.

62. Unfazed by these facts and her reckless conduct, Defendant Barnett once again extorted the other plaintiff lawyers in gross breach of her fiduciary duties to the Class. She stated that she and her team would not leave town and would, in fact, agree to move forward in handling the trial but only if each plaintiff attorney agreed that she and she alone would conduct and approve any future settlements on behalf of the Class.

63. With the trial one (1) day away, and with Defendant Barnett having put them and the Class in an impossible position, the other plaintiff lawyers could do nothing than concede to Defendant Barnett's megalomaniac demands.

64. Following Defendant Barnett's threats to leave the trial, she immediately communicated to Defendant Morgan that the other plaintiff's attorneys had settled "behind her back" and that they were trial wimps who were afraid of a great case. Upon information and belief, Defendant Morgan texted Mr. Cherry, calling the other plaintiff lawyers "pussies" and that they should stand back and let Defendant Barnett handle this case. Moreover, upon information and belief, Defendant Morgan emailed or otherwise communicated with Mr. Manis that he knew Mr. Manis needed the money and wanted to settle but that he needed to let Defendant Barnett handle the case because she knew what she was doing and Mr. Manis did not.

65. Upon information and belief, Defendant Barnett informed Defendant Morgan that she would not rely on the other plaintiffs to do anything at the trial and that she would simply ignore their presence. As a result, Defendant Morgan sent in Keith Mitnick, a trial attorney from Morgan & Morgan, to assist Defendant Barnett.

66. During jury selection, Defendant Barnett appeared to be on the verge of some type of emotional breakdown. Except as to the Morgan & Morgan attorneys, Defendant Barnett refused to introduce the other plaintiff attorneys to the jury panel, acting as if they simply were

not in the Courtroom. She placed the other attorneys in the far back of a huge, specially commissioned courtroom so that they were not even visible to the jury. Chancellor Kyle noticed this odd arrangement and instructed his courtroom Clerk to move these attorneys to the front of the courtroom, which was done. Defendant Barnett saw this and demanded that they be moved back and away from her.

67. More importantly, Defendant Barnett flatly refused to have settlement discussions with defense counsel, falsely claiming that they each had somehow offended her or committed some sort of undefined transgression against her, thus allegedly warranting the non-collegial, hostile attitude she showed towards them. In sum, with her volatile and irrational behavior, Defendant Barnett had managed to alienate virtually every defense lawyer in the courtroom.

68. Notwithstanding Defendant Barnett's reckless and unprofessional behavior, the Funeral Home Defendants continued to seek to settle with the Class during the trial. Since Defendant Barnett had brazenly refused to communicate with defense counsel concerning settlement, the Funeral Home defense counsel began to approach Mr. Manis and other plaintiff lawyers "ostracized" by Defendant Barnett to make settlement offers to them, with the hope they would convince Defendant Barnett to counter or accept.

69. For example, Andy Owens, counsel for the Millington Funeral Home, offered Mr. Manis a total of $1.8 million to settle the 57 bodies it delivered, which equaled $33,962 per decedent. (Millington Funeral Home's policy limits were $2 million). This offer was conveyed to Defendant Barnett. She promptly rejected the offer, failing to even inform the Class representatives that the offer had been made.

70. Despite the fact that this offer was close to policy limits, Defendant Barnett insanely rationalized her out-of-hand rejection of this offer on the basis that another defendant

had paid $50,000 and that this, as a matter of Class action law, prevented her and the Class representative from accepting less. This logic was grossly negligent – there is no law that requires this. Class settlements – like any settlement – are based on the law, the facts and a given defendant's ability to pay, not on the ability to pay of a totally unrelated defendant. To the contrary, this offer should have been accepted, and it was egregious for Defendant Barnett to not do so.

71. Likewise, MJ Edwards and every other defendant made opening offers of $10,000 or more to settle during the trial. There were literally $25 million in offers outstanding, but Defendants, due to sheer reckless ego, refused to even discuss these offers. Defendant Barnett's only response was that she would negotiate with the Funeral Home Defendants after she obtained a multimillion jury verdict. This is conduct was reckless and so egregious as to be unreasonable and to be well below the standard of care imposed on Tennessee lawyers because the average reasonably prudent lawyer would not have committed this conduct.

72. At the conclusion of the liability phase of the jury trial (which was bifurcated into liability and then damages proceedings), the jury found against the Class on all claims except breach of fiduciary duty. However, the jury assigned 99% of fault to Galilee and only 1% of fault to the Funeral Home Defendants. This finding was devastating to the Class Members who hoped to obtain a meaningful recovery for the harms that they suffered at the hands of Galilee and the Funeral Home Defendants.

73. The Court thereafter ordered the parties to mediation over the weekend before proceeding with the damages portion of the trial. Even then, Barnett was out of control. In the face of this devastating jury verdict, she demanded $45,000 for each body from each of the Funeral Home Defendants, regardless of their ability to pay. In support of this outrageous

demand, she irrationally claimed, with no basis whatsoever in fact, that the jury would award $4.5 million per body. This constitutes gross negligence because the damages in this instance were capped under Tennessee law at $750,000, and no reasonable lawyer would believe that, under these facts, such an award would be warranted, particularly in light of the jury's findings.

74. In fact, the jury ultimately awarded a mere $75 for each body for a total recovery for the entire Class of $82,000.00.

E. Plaintiff's claims arise solely out of the allegations set forth above regarding Defendants' intentional, reckless, and irrational refusal to consider the Funeral Home Defendants' settlement offers and ability to pay and their unethical practice of withholding these settlement offers from the named Class representatives and the Class members.

75. Plaintiff does not allege that Defendants engaged in any malpractice in connection with the litigation of the trial of the underlying Wofford/Galilee Class Action Lawsuit and does not claim that malpractice was committed in the presentation of evidence and argument at trial. Plaintiff's malpractice claims arise solely out of the egregious and unethical behavior alleged herein whereby Defendants refused to consider and accept the Funeral Home Defendants' settlement offers and their ability to pay and their unethical practice of withholding these settlement offers from the named Class representatives and the Class Members. Accordingly, any appeal of the trial verdict is irrelevant to Plaintiff's allegations and legal claims.

V.

CLASS ACTION ALLEGATIONS

76. Pursuant to Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure, the named Plaintiff brings this Class Action on behalf of all persons who comprised the certified Class in the Wofford/Galilee Class Action as defined and affirmed in *Wofford v. M.J. Edwards & Sons Funeral Home Inc.*, 528 S.W.3d 524 (Tenn. Ct. App. 2017), permission to appeal denied, *Wofford v. M.J. Edwards & Sons Funeral Home Inc.*, No. W2015-02377-SC-R11-CV, 2017

Tenn. LEXIS 483 (Tenn. Aug. 18, 2017) (hereinafter referred to as the "Class").

77. Defendants Barnett and Morgan Nashville as Lead Counsel in the Wofford/Galilee Class Action represented the Class, had an attorney-client relationship with the Class and owed a fiduciary duty to the Class. Because the Class was certified in the Wofford/Galilee Action, Plaintiff alleges that the proposed Class in this Action (which is identical the certified Class) is eminently certifiable under Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure.

78. However, this putative Class has not yet been certified and is a wholly different proceeding from the Wofford/Galilee Class Action, which did not involve allegations against the Defendants named herein. Thus, the allegations and contentions asserted in this Complaint are solely the allegations of the named Plaintiff in this action and cannot be attributed to any of the parties in the ongoing proceedings in the Wofford/Galilee Class Action, including any appellate proceedings being pursued by the parties to the Wofford/Galilee Class Action.

VI.

CAUSES OF ACTION

COUNT 1 – LEGAL MALPRACTICE (AGAINST ALL DEFENDANTS)

79. Plaintiff re-alleges paragraphs 1 through 66 of this Complaint as if set forth verbatim herein.

80. As attorneys representing Plaintiff and the Class as Lead Counsel in the Wofford/Galilee Class Action, Defendants Barnett and Morgan Nashville owed Plaintiff and the Class the duty to exercise that degree of due care, diligence, prudence and skill that is required of Tennessee attorneys when representing Class members.

81. By assisting, advising and providing resources to Defendants Barnett and Morgan Nashville (and by controlling them through Morgan Nashville Management and Morgan &

Morgan) in connection with the Wofford/Galilee Class Action, Defendants Morgan, Morgan & Morgan and Morgan Nashville Management also assumed and owed this same duty of care to Plaintiff and the Class.

82. As alleged above, Defendants clearly breached their duties to Plaintiff and the Class by failing and refusing to accomplish reasonable settlements with the Funeral Home defendants. Among other things, Defendants: (i) ignored and failed to accept reasonable settlement offers, (ii) rejected settlement offers at or close to policy limits on the illogical claim that unrelated defendants had agreed to pay more per body, (iii) failed and refused to communicate settlement offers to the Class representatives, (iv) failed to properly consider each defendant's ability to pay, including the huge deductibles per body that was imposed on MJ Edwards, and (vi) rejected settlement offers on the illogical and grossly flawed grounds that SCI, an unnamed party, would pay for any judgment as the alter ego of MJ Edwards.

83. Defendants' failures and wrongful actions were so egregious as to be unreasonable and to be well below the standard of care imposed on Tennessee lawyers because the average, reasonably prudent lawyer would not have committed this conduct.

84. As a direct and proximate result of Defendants' negligent acts and omissions, Plaintiff has suffered damages in the form of at least $25 million in settlements that could have been and should have been achieved in the Wofford/Galilee Class Action.

COUNT 2 – BREACH OF FIDUCIARY DUTIES (AGAINST ALL DEFENDANTS)

85. Plaintiff re-alleges paragraphs 1 through 72 of this Complaint as if set forth verbatim herein.

86. Under Tennessee law, a fiduciary relationship exists between an attorney and his client, and the confidence which the relationship begets between the parties makes it necessary

for the attorney to act in utmost good faith. *Alexander v. Inman*, 974 S.W.2d 689, 694 (Tenn. 1998) ("The relationship of attorney and client is 'extremely delicate and fiduciary'; therefore, attorneys must deal with their clients in utmost good faith. This level of good faith is significantly higher than that required in other business transactions where the parties are dealing at arm's length. The client must be able to trust the attorney to deal fairly at all times, including during the negotiation of the attorney's terms of employment").

87. As attorneys representing Plaintiff and the Class as Lead Counsel in the Wofford/Galilee Class Action, Defendants Barnett and Morgan Nashville owed Plaintiff and the Class a fiduciary duty to act at all times in their best interests. Defendants Barnett and Morgan Nashville breached their fiduciary duties a described in detail throughout this Complaint.

88. By assisting, advising and providing resources to Defendants Barnett and Morgan Nashville (and by controlling them through Morgan Nashville Management and Morgan & Morgan) in connection with the Wofford/Galilee Class Action, Defendants Morgan, Morgan & Morgan and Morgan Nashville Management also assumed and owed this same fiduciary duty to Plaintiff and the Class.

89. By their acts and omissions alleged herein, Defendants breached their fiduciary duties, which have proximately caused Plaintiff significant unliquidated damages to be determined by the trier of fact.

COUNT 3 – NEGLIGENT SUPERVISION (AGAINST DEFENDANTS MORGAN, MORGAN NASHVILLE MANAGEMENT AND MORGAN & MORGAN)

90. Plaintiff re-alleges paragraphs 1 through 77 of this Complaint as if set forth verbatim herein.

91. Defendants Morgan, Morgan Nashville Management, and Morgan & Morgan, each undertook the duty and responsibility of supervising Defendant Barnett and Morgan

Nashville in connection with the Wofford/Galilee Class Action.

92. These Defendants breached their duties to supervise and manage Defendants Barnett and Morgan Nashville. Among other things, these Defendants failed to ensure that Defendants Barnett and Morgan Nashville did not: (i) ignore and fail to accept reasonable settlement offers, (ii) reject settlement offers at or close to policy limits on the illogical claim that unrelated defendants had agreed to pay more per body, (iii) fail and refuse to communicate settlement offers to the Class representatives, (iv) fail to properly consider each defendant's ability to pay, including the huge deductibles per body that was imposed on MJ Edwards, and (vi) reject settlement offers on the illogical and grossly flawed grounds that SCI, an unnamed party, would pay for any judgment as the alter ego of MJ Edwards.

93. As a direct and proximate result of Defendants' negligent acts and omissions, Plaintiff has suffered damages in the form of at least $25 million in settlements that could have been and should have been achieved in the Wofford/Galilee Class Action.

COUNT 4 – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY (AGAINST DEFENDANTS MORGAN, MORGAN NASHVILLE MANAGEMENT AND MORGAN & MORGAN)

94. Plaintiff re-alleges paragraphs 1 through 81 of this Complaint as if set forth verbatim herein.

95. As attorneys representing Plaintiff and the Class as Lead Counsel in the Wofford/Galilee Class Action, Defendants Barnett and Morgan Nashville owed Plaintiff and the Class a fiduciary duty to act at all times in their best interest.

96. Defendants Barnett and Morgan Nashville breached their fiduciary duties as described in detailed throughout this Complaint.

97. At all relevant times alleged in this Complaint, Defendants Morgan, Morgan

Nashville Management, and Morgan & Morgan were acting for their own personal financial interests when engaging their wrongful conduct described in detail herein.

98. Furthermore, these Defendants did not act in good faith for the benefit of Plaintiff and the Class and provided substantial and material assistance to Defendants Barnett and Morgan Nashville in carrying and accomplishing such breach.

99. As a direct and proximate result of their substantial assistance, Defendants Morgan, Morgan Nashville Management, and Morgan & Morgan aided and abetted Defendant Barnett and Morgan Nashville's breach of fiduciary duties to Plaintiff and the Class thus directly and proximately caused Plaintiff significant unliquidated damages.

COUNT 5 – PUNITIVE DAMAGES AS A REMEDY (AGAINST ALL DEFENDANTS)

100. Plaintiff re-alleges paragraphs 1 through 87 of this Complaint as if set forth verbatim herein.

101. The conduct of Defendants was intentional and willful or, at the bare minimum, reckless. As a result, Defendants clearly knew or were reckless in the conduct described herein above.

102. With respect to the applicable factors that may be addressed by the fact finder when determining punitive damages, Plaintiff would allege as follows:

(i) Defendants' financial affairs, financial condition and net worth range in the multimillions of dollars;

(ii) The nature and reprehensibility of Defendants' wrongdoing is substantial because Defendants have intentionally or recklessly abused their fiduciary relationship with Plaintiff;

(iii) Defendants were aware of the harm that could and would be

caused to Plaintiff with respect to their wrongful conduct; and

(iv) Defendants' misconduct spanned over one year.

103. As a result, significant punitive damages should be imposed on Defendants in an amount to be determined by the trier of fact.

104. Pursuant to *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348 (6th Cir. 2018), *en banc* pets. denied, 919 F.3d 992 (6th Cir. 2019), the punitive damages limitation set forth in TENNESSEE CODE ANNOTATED § 29-39-104(a)(5) is null and void on the basis that it violates the Tennessee Constitution. As a result, this limitation cannot apply to any punitive damage award that may be rendered by the trier of fact in this case.

VII.

PRAYER FOR RELIEF

WHEREFORE, the named Plaintiff and the Class Members demand judgment against Defendants Kathryn E. Barnett, Morgan & Morgan Nashville , PLLC, John B. Morgan, Morgan & Morgan Nashville Management, Inc. and Morgan & Morgan, P.A. on each Count of the Complaint and the following relief:

1. Issue service of process and serve each Defendant;
2. Issue an Order certifying that this action may be maintained as a Class Action, appointing Plaintiff and her counsel to represent the Class, and directing that reasonable notice of this action be given by Defendants to the Class Members;
3. Grant any reasonable request to Amend Plaintiff's Class Action Complaint to conform to the discovery and evidence obtained in this class action;
4. Empanel a jury to try this matter;
5. Award Plaintiff and the Class Members compensatory damages in an amount not less than $25,000,000.00;

6. Award pre-and post-judgment interest in the amount of 10% per annum pursuant to TENN. CODE ANN. § 47-14-123 in an amount according to the proof at trial with respect to Plaintiff and the Class Members' liquidated damages award;

7. Grant declaratory relief to Plaintiff and the Class Members as requested herein;

8. Award punitive damages against each Defendant in an amount not less than $15,600,000.00;

9. Award costs and expenses incurred in this action pursuant to Rule 54.01 of the Tennessee Rules of Civil Procedure;

10. Grant the Plaintiff Class Members such further relief as the Court may deem just and proper.

Respectfully submitted,

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